



August 28, 2007

Christopher Martin
Program Manager
City of Milwaukee
Emerging Business Enterprise
City Hall Room 606
200 East Wells Street
Milwaukee, Wisconsin 53202

**Re: City of Milwaukee's Study to Determine the Effectiveness of
the City's Emerging Business Enterprise Program**

Dear Mr. Martin:

Enclosed please find the draft volume which was revised pursuant to the feedback Mason Tillman received from the City on August 22, 2007. Please let me know if there are no other comments and I will finalize the report.

Sincerely,

Allura J. Scott

Allura J. Scott
Assistant Project Manager

cc: Eleanor Mason Ramsey, Ph.D., Project Manager

CITY OF MILWAUKEE



Study to Determine the Effectiveness of the City's Emerging Business Enterprise Program



SUBMITTED BY:
MASON TILLMAN ASSOCIATES, Ltd.
August 2007

Table of Contents

CHAPTER 1:	PROCUREMENT ANALYSIS	1-1
CHAPTER 2:	CERTIFICATION COMPARISON ANALYSIS	2-1
CHAPTER 3:	SUBCONTRACTING EVALUATION	3-1
CHAPTER 4:	MARKET AREA ANALYSIS	4-1
CHAPTER 5:	AVAILABILITY ANALYSIS	5-1
CHAPTER 6:	PRIME AND SUBCONTRACTOR UTILIZATION	6-1
CHAPTER 7:	ANECDOTAL ANALYSIS	7-1
CHAPTER 8:	IDENTIFYING BEST MANAGEMENT PRACTICES	8-1
CHAPTER 9:	MONITORING AND REPORTING ENHANCEMENTS	9-1
CHAPTER 10:	RECOMMENDATIONS	10-1

A P P E N D I X



List of Tables

Table 1.01	City of Milwaukee Procurement Process	1-4
Table 2.01	Recommended Local Certification Agencies	2-16
Table 2.02	Comparisons of Recommended Local Certification Agencies	2-18
Table 4.01	City of Milwaukee's Market Area:	4-5
Table 4.02	City of Milwaukee's Market Area by County	4-7
Table 5.01	Prime Contractor Availability Data Sources	5-2
Table 5.02	Prime Contracts by Size:	5-4
Table 5.03	Construction Prime Contracts by Size:	5-6
Table 5.04	Professional Services Prime Contracts by Size:	5-7
Table 5.05	Goods and Other Services Prime Contracts by Size: January 1, 2005 to December 31, 2005	5-8
Table 5.06	Largest EBE Prime Contract Awards by Industry	5-9
Table 5.07	Available Construction Prime Contractors	5-11
Table 5.08	Available Professional Services Prime Contractors	5-13
Table 5.09	Available Goods and Other Services Prime Contractors	5-15
Table 5.10	Unique Subcontractor Availability Data Sources	5-16
Table 5.11	Available Construction Subcontractors	5-18
Table 5.12	Available Professional Services Subcontractors	5-20
Table 6.01	Informal Contract Thresholds for the City of Milwaukee	6-2
Table 6.02	Total Prime Contracts and Dollars Expended: All Industries, January 1, 2005 to December 31, 2005	6-3
Table 6.03	Construction Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005	6-5
Table 6.04	Professional Services Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005	6-7
Table 6.05	Goods and Other Services Prime Contractor Utilization: All Contracts, January 1, 2005 to December 31, 2005	6-9
Table 6.06	Construction Prime Contractor Utilization: Contracts under \$500,000, January 1, 2005 to December 31, 2005	6-11
Table 6.07	Professional Services Prime Contractor Utilization: Contracts under \$500,000, January 1, 2005 to December 31, 2005	6-13
Table 6.08	Goods and Other Services Prime Contractor Utilization: Contracts under \$500,000, January 1, 2005 to December 31, 2005	6-15
Table 6.09	Construction Services Prime Contractor Utilization: Contracts under \$25,000, January 1, 2005 to December 31, 2005	6-17
Table 6.10	Professional Services Prime Contractor Utilization: Contracts under \$25,000, January 1, 2005 to December 31, 2005	6-19



List of Tables Continued

Table 6.11	Goods and Other Services Prime Contractor Utilization: under \$30,000, January 1, 2005 to December 2005	6-21
Table 6.12	Prime Contractor and Subcontractor EBE Utilization	6-22
Table 6.13	Prime Contractor and Subcontractor EBE Utilization Professional Services Contracts	6-23
Table 6.14	Total Subcontract Awards and Dollars: All Industries, January 1, 2005 to December 31, 2005	6-23
Table 6.15	Construction Utilization: All Subcontracts, January 1, 2005 to December 31, 2005	6-25
Table 6.16	Professional Services Utilization: All Subcontracts, January 1, 2005 to December 31, 2005	6-27
Table 7.01	Anecdotal Interviewee Profile	7-3
Table 7.02	Summary of Findings Concerning Current Barriers Against Ethnic/Gender Groups	7-30
Table 10.01	Recommended Local Certification Agencies	10-2
Table 10.02	African American EBE and Non-EBE Utilization Contracts	10-9



PREFACE

1. Study Purpose

The purpose of the Study is to determine the effectiveness of the City of Milwaukee's (City) Emerging Business Enterprise Program. The Emerging Business Enterprise Program was created under Chapter 360 of the Milwaukee Code of Ordinances. The Study included four industries: construction, architecture and engineering, professional services, and goods and other services. The study period was between January 1, 2005 and December 31, 2005.

This volume is organized into the following ten chapters:

- (1) Procurement Analysis**
- (2) Certification Comparison Analysis**
- (3) Subcontracting Evaluating**
- (4) Market Area Analysis**
- (5) Availability Analysis**
- (6) Prime Contractor and Subcontractor Utilization Analysis**
- (7) Anecdotal Analysis**
- (8) Identifying Best Management Practices**
- (9) Monitoring and Reporting Enhancements, and**
- (10) Recommendations**

2. Study Team

Mason Tillman Associates, Ltd., (Mason Tillman) a public policy consulting firm based in Oakland, California, was selected to perform the Study. Prism Technical Management & Marketing Services, LLC assisted Mason Tillman in the performance of the Study. The subcontractor performed data collection activities, anecdotal interviews, focus group facilitation and draft report, and business community meeting facilitation.



3. Overview of the Current EBE Program

The Emerging Business Enterprise (EBE) Program was enacted in 1989, through Chapter 360 of the Milwaukee Code of Ordinances. The program was created to assist and protect the interests of individuals who are disadvantaged and small business concerns in order to promote and encourage full and open competition in the City of Milwaukee. Chapter 360 of the Milwaukee Code of Ordinances was revised in 2002 to utilize city-certified EBEs in all contracting activities by approving an annual 18 percent EBE utilization requirement for each contracting department, and all other operating departments.



1

PROCUREMENT ANALYSIS

I. INTRODUCTION

Mason Tillman was commissioned by the City of Milwaukee (City) to conduct a study to determine the effectiveness of the City's Emerging Business Enterprise Program (EBE) in the areas of construction, professional services, and goods and other services.

One of the tasks assigned to Mason Tillman was to develop an understanding of the laws, regulations, procedures, and policies which govern the City's procurement practices. The Study includes an analysis of how those laws, regulations, procedures, and policies impact the participation of City-certified Emerging Business Enterprises and minority and woman-owned businesses.

The salient ordinances¹ governing the City of Milwaukee's procurement practices in the Milwaukee Code of Ordinances are:

- Chapter 7: Commissioner of Public Works
- Chapter 16: Boards and Commissions; Purchasing
- Chapter 81-102.3: Purchasing Appeals
- Chapter 105-65.4: Disposal of Unclaimed Vehicles and Trailers
- Chapter 310: Department of Administration
- Chapter 360: Emerging Business Enterprise Program
- Wisconsin State Statutes,
Subchapter IV, Section 16: Purchasing

The time period for this study commences January 1, 2005, through December 31, 2005.



¹ Milwaukee Code of Ordinances.

II. DEFINITIONS

The definitions applicable to the City of Milwaukee's Study to Determine the Effectiveness of the City's Emerging Business Enterprise program are:

- **Emerging Business Enterprise** means a small business concern that is owned, operated, and controlled by one or more individuals who are disadvantaged. The individuals must have day-to-day operational and managerial control, interest in capital, financial risks, and earnings commensurate with the percentage of ownership.
- **Small Business Concern** means a business which is independently owned, operated, and controlled, and which is not dominant in its local field of operation, and which has had annualized gross receipts consistent with the receipts-based size standards set forth by the federal Small Business Administration (SBA). A business which does not meet these requirements may nonetheless be deemed a small business concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.
- **Owned, Operated, and Controlled** means a business which is one of the following:
 - 1) A sole proprietorship legitimately owned, operated, and controlled by an individual who is disadvantaged;
 - 2) A partnership or joint venture legitimately owned, operated, and controlled by individuals who are disadvantaged and who own at least 51 percent of the voting interests of the enterprise;
 - 3) A corporation legitimately owned, operated and controlled by one or more individuals who are disadvantaged, who own at least 51 percent of the outstanding shares, and who hold at least 51 percent of the voting interests of the corporation.

III. OVERVIEW OF THE PROCUREMENT PROCESS

The City of Milwaukee's Code of Ordinances and the Wisconsin State Statutes delineate the City's procurement regulations and procedures. Small no-bid procurement of goods and other services valued at less than \$30,000 are not subject to formal bids or advertisement requirements. In accordance with the advertising requirements, formal bids are required to be advertised in the City's official newspaper at least twice, two days prior to the bid opening date.

Informal bids are conducted for purchases valued between \$10,001 and \$30,000. Informal bids are not advertised or publicly opened. Procurement for purchases valued at more than \$30,000 are procured by formal bid procedures awarded by the Purchasing Director. Formal bids are advertised in the City's official newspaper for at least five days preceding the bid opening date. The formal bids are opened publicly and bidders' names are read into the record.



The Request for Proposal (RFP) process is used when price is not the only factor used to determine the contract award. The RFP process is an exception to the bid process and a Request for Exception to Bidding form is required by the User Department. Formal RFPs are advertised in the City's official newspaper at least five days prior to the opening date. All formal RFPs are opened publicly and the proposers' names are read into the record.

Procurement of the Department of Public Work's (DPW) professional services contracts valued at more than \$25,000 is used when the service required is professional, artistic, scientific, or creative. It is also used when it is impossible or impractical for the City to develop precise bidding specifications or if the project is experimental in nature.

Procurement of the DPW's construction services valued at more than \$25,000 must be advertised. The bid is advertised at least twice, in two different weeks, in the official City newspaper. The advertisement includes the work to be done and the time period for doing the work. Table 1.01 below summarizes the City's procurement policies and procedures.



Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Goods						
Petty Cash	Commodities and Services valued at less than \$100	None	Solicitation is at the discretion of the User Department	None	User Department	User Department
PeopleSoft Voucher	Commodities valued less than \$500 from vendors not on the Procard Valued Supplier List or any services valued less than \$2,000	None	One or more quotes (recommended written) at the discretion of the User Department	An emphasis on Emerging Business Enterprise (EBE) participation is encouraged	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
PeopleSoft Requisition	All purchases valued at more than \$500 (when the Procard cannot be used)	All bids and RFPs are posted on the City's web site. Vendors who registered for E-Notify for the bid category will receive an email notice	Informal bid/RFP for purchases between \$10,001 and \$30,000 or formal bid/RFP for purchases more than \$30,000	None	Procurement Services	Purchasing Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
Procurement Card	Goods and Other Services valued less than \$5,000	None	User Department solicits vendors for the needed trades listed in the City's Valued Supplier List	An emphasis on EBE participation is encouraged.	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
PeopleSoft Requisition with Jumpstart Form	Commodities between \$500 and \$10,000; and Services between \$2,000 and \$10,000, when the Procard cannot be used	None	None	If the quote provided by the User Department is not from an EBE, the Purchasing Agent forwards the requisition and quote to an EBE Analyst to determine if an lower quote can be obtained from an EBE vendor	Procurement Services issues a purchase order once the User Department completes a Jumpstart form	Procurement Services

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Piggyback Purchases						
The City piggybacks off of a resulting contract that is conducted by another governmental agency for a particular commodity or service		Advertising requirements are governed by the lead agency	Solicitation requirements are governed by the lead agency	EBE requirements are governed by the lead agency	User Department	City Purchasing Director
Professional and Other Services						
	Services valued at less than \$30,000	None	Informal bid/RFP process	Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation	User Department Manager	City Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
	Services valued at more than \$30,000	Bids/RFPs are advertised in the City's newspaper at least twice, two days prior to the bid opening date. The bids/RFPs are publicly opened and the vendors' names are read into the record	Formal bid/RFP process	Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation determination	User Department	City Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Other Procurements						
Vendor Contract (formerly Blanket Contract)	Fixed price over a specific period of time	Bids are posted on the City's web site on the Bids pending page	Informal bid process for contracts valued at less than \$30,000 Formal bid process for contracts valued at more than \$30,000	Bids reviewed for possible EBE participation	User Department	City Purchasing Director
Emergency	None	None	None	None	City's Purchasing Director/User Department	City's Purchasing Director

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
PROCUREMENT SERVICES						
Single/Sole Source	None	None	None	All single/sole source requisitions are forwarded to an EBE Analyst for possible EBE participation determination	User Department	City's Purchasing Director
DEPARTMENT OF PUBLIC WORKS						
Commodities						
Petty Cash	Commodities valued at \$100 or less	None	Solicitation is at the discretion of the User Department's Petty Cash Administrator	None	User Department	User Department's Petty Cash Administrator

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Small Dollar Purchase	Commodities valued at \$500 or less	None	Solicitations are made by one or more price quotes at the discretion of the User Department	None	User Department	User Department
PeopleSoft Requisition	Commodities valued at \$500 or more	None	Solicitation is at the discretion of the User Department	None	User Department	User Department
Procurement Card	Commodities valued at \$5,000 or less	None	Solicitations are made from the City's Valued Supplier List	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Services						
Small Dollar Purchase	Services valued at \$2,000 or less	None	One or more vendor price quotes Contract goes to the lowest compliant vendor	None	User Department	User Department
Procurement Card	Services valued at \$5,000 or less	None	Solicitations are made from the City's Valued Supplier List	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Purchasing Authority	Services valued at \$4,999 or less	None	Solicitations are made by one or more telephone bids, low bid confirmed in writing	None	User Department	User Department
	Services valued between \$5,000 and \$9,999	None	Solicitations are made by three telephone bids, with low bid confirmed in writing	None	User Department	User Department
	Services valued between \$10,000 and \$14,999	None	Solicitations are made by a minimum of three written bids	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
	Services valued between \$15,000 to \$24,999	None	Solicitations are subject to informal procurement procedures	None	User Department	User Department
Purchasing Authority Formal Contract	Services valued at \$25,000 or more	Bid/RFPs are advertised in the City's official newspaper at least twice, in two different weeks, prior to bid opening. The bids are publicly opened and the vendors' names are read into record	Formal RFP process	RFPs are given to an EBE analyst for review of possible EBE participation	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Service Orders						
	Service Orders valued at less than \$5,000	None	Solicitations are made by one or more telephone bids, with low bid in writing	None	User Department	User Department
	Service Orders valued between \$5,000 and \$24,999	None	Solicitations are made by three telephone bids, with the low bid in writing Service orders over \$10,000 are solicited with three written bids	None	User Department	User Department

Table 1.01 City of Milwaukee Procurement Process

Procurement Category	Dollar Threshold	Advertising Requirement	Solicitation Process	Emerging Business Enterprise Requirements	Requisition Approval	Procurement Approval
DEPARTMENT OF PUBLIC WORKS						
Construction						
	Construction Services valued at more than \$25,000	The bid/RFP is advertised for at least twice, in two different weeks, in the official City newspapers. The bids/RFPs are opened publicly and the vendor's names are read into the record	All Construction contracts are awarded to the lowest responsible bidder	Prior to the creation of the bid, requests for bids are reviewed by EBE analysts for potential EBE participation	Commissioner of Public Works	Commissioner of Public Works

IV. STANDARDS FOR PROCUREMENT SERVICES' PROCUREMENT CONTRACTS

A. Small No-Bid Procedures

1. Petty Cash - Purchases of goods valued at less than \$100

Procurement for purchase of commodities and services valued at less than \$100 is made by solicitation of quotes at the discretion of the User Department. No other documentation is required by Procurement Services.

2. PeopleSoft Voucher - Purchases of goods valued at less than \$500 or Services Valued at less than \$2,000

Procurement for commodities valued at less than \$500 from a vendor that is not on the Procard Supplier list, or any service valued at less than \$2,000. Solicitations are made by one or more quotes (recommended written) at the discretion of the User Department with an emphasis on EBE participation.

3. PeopleSoft Requisition - Purchases of goods valued at more than \$500

Procurement for commodities valued more than \$500 when the Procard cannot be used. The User Department must enter a PeopleSoft requisition. If the purchase being requested is for a sole source, single source, or a request for an RFP, the User Department must complete an Exception to Bidding Form.

4. Procurement Card - Purchases of goods and other services valued at less than \$5,000

Procurement for commodities and services valued at less than \$5,000. Items must be purchased utilizing the City's Valued Supplier List with an emphasis on EBE participation. The list can be viewed on the Procurement Services website under the Procard link.

5. PeopleSoft Requisition with Jumpstart Form - Purchases of goods valued between \$500 and \$10,000 and services between \$2,000 and \$10,000

Procurement for commodities between \$500 and \$10,000 and services between \$2,000 and \$10,000 when the Procard cannot be used. The User Department must enter a PeopleSoft requisition plus submit a completed Jumpstart form. This form should have a valid price for each item contained on the requisition, delivery times, and a binding signature from the selected vendor. Procurement Services will then create a purchase order with the selected vendor. If the quote provided by the User Department is not from an EBE vendor, the Purchasing Agent forwards the requisition and quote to an EBE Analyst to determine if a lower quote can be obtained from an EBE vendor.



6. Piggyback Purchases - Purchases valued at more than \$500

When a competitive bid is conducted by another governmental agency for a particular commodity or service, which include terms and conditions that allow other local governmental agencies to take advantage of the pricing, the City is allowed to piggyback off of the resulting contract.

Piggyback contracts are typically awarded to vendors as distributors for a certain commodity by manufacture or brand. The State of Wisconsin and the University of Wisconsin post their contracts on the Internet. The User Department places an order directly with the vendor without prior approval from the Procurement Services Section for any City wide vendor contract that was established by piggybacking off a State or University contract.

B. Informal Bid Procedures

Informal bids are conducted for purchases valued between \$10,001 and \$30,000. Informal bids are not advertised or publicly opened. Informal bids are posted on the Procurement Services website and vendors who are registered for E-Notify for the bid category will receive an email notice when the bid is posted to the Bids Pending page.

Informal bids are usually closed seven days after the posting. Awards for informal purchases are made by the Purchasing Agent to the lowest responsible and responsive bidder that is in compliance with the bid specifications and/or drawings, and terms and conditions.

1. Commodity Purchases - Purchases valued at less than \$30,000

Procurement for commodity purchases valued less than \$30,000. All bids are posted on the City's website. An EBE Bid Analysis Form is completed to determine whether EBE participation will be required on the contract.

2. Services Contracts - Services valued at less than \$30,000

Procurement of services valued less than \$30,000 for professional, artistic, experimental services, or general services. The Request for Proposal process may be used instead of the bid process to acquire services when price is not the only factor used to determine the contract award. Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation analysis.

C. Formal Bid Procedures

Procurement for purchases valued at more than \$30,000 are procured by formal written bid/RFP contract awarded by the Purchasing Director. Formal bids are advertised in the City's official



newspaper for at least five days preceding the bid opening date. All formal bids are opened at a public bid opening where vendor names are read and recorded.

Formal procurement contracts include:

- i. Commodity Contract - for the procurement of goods, supplies, materials and equipment at a fixed price with a specified delivery date resulting from an award of a formal bid or exception to bid request.
- ii. Service Contract - for the procurement of a service, i.e. maintenance of software and hardware, consulting services, etc., at a fixed price for a specified period of time resulting from award of a formal bid, RFP, or exception to bid request.
- iii. Vendor Contract (Commodity or Service) - for the procurement of a commodity or service over a specified period of time at specified prices with an estimated contract value resulting from an award of a formal bid, RFP, or exception to bid request.
- iv. City-wide Vendor Contract (Commodity or Service) - for the procurement of a commodity or service over a specified period of time at a specified price with an estimated contract value established for all City departments to purchase from resulting from an award of a formal bid, RFP, or exception to bid request.

A formal contract requires the signature of the contractor, City Purchasing Director and the Comptroller.

1. Services Contracts - Services valued at more than \$30,000

Procurement of services valued at more than \$30,000 for professional, artistic, experimental services, or general services. The Request for Proposal process may be used to acquire services when price is not the only factor used to determine the contract award. Draft bids are forwarded to an EBE Analyst by the Purchasing Agent for appropriate EBE participation.



D. Request for Proposal Procedures

The Request for Proposal (RFP) process is used when price is not the only factor used to determine the contract award. The following evaluation criterion is established and weighted:

- i. Experience of the firm
- ii. Experience of personnel assigned to the project
- iii. Approach to project
- iv. Reporting methods
- v. Training
- vi. Completeness of the proposal
- vii. Ability to meet the City's needs

The RFP process is an exception to the bid process and a Request for Exception to Bidding form is required from the User Department. The City Purchasing Director approves the request to conduct the RFP process.

Formal RFPs are advertised in the City's official newspaper at least five days prior to the opening date and are opened publicly where the vendors names are read into the record. All formal RFPs, the scope of work and any attachments are posted on the Procurement Services website under the Bids Pending link page. Potential proposers who are registered for E-Notify will receive an email notification when the RFP documents are posted and available to download from the City's website.

Formal RFPs are given to the EBE analyst for review of possible EBE participation or extra points. The proposals are reviewed by an evaluation committee. Once the evaluation committee completes its review of the proposals, the purchasing agent tabulates the scores. A letter of award recommendation to the highest ranked proposer is prepared by the evaluation committee. The purchasing agent then prepares an award recommendation for review and approval by the Purchasing Director. There is no appeal process for this solicitation procedure.



E. Exemptions From the Formal Procurement Process

The following purchases are exempt from the City's formal procurement process.

1. Emergency Purchases

Emergency purchases are permitted in situations that threaten life, health, safety or the continuation of work. Emergency procurements are only authorized by the City's Purchasing Director.

2. Single/Sole Source Contracts

Single/sole source procurements are utilized when there are no other known sources of supply for a particular commodity or service. A PeopleSoft requisition must be entered and a Request for Exception to Bidding form must be submitted by the User Department. All single/sole source requisitions are forwarded to an EBE Analyst for possible EBE participation.

V. STANDARDS FOR THE DEPARTMENT OF PUBLIC WORKS' PROCUREMENT CONTRACTS

A. DPW Small No-Bid Procedures for Commodities

1. Petty Cash - Purchase of commodities valued at less than \$100

Procurement for purchase of commodities valued at less than \$100 is made by solicitation under the authorization of the Division's Petty Cash Administrator. No other documentation is required by the Department of Public Works.

2. Small Dollar Purchase - Purchase of commodities valued at less than \$500

Procurement of commodities valued at less than \$500 is made by solicitation by one or more price quotes. If the lowest compliant quote exceeds the dollar range for the small dollar purchase option, another option can be chosen. The Small Dollar Purchase option cannot be used for procurement contracts or Procard purchases.

3. PeopleSoft Requisition - Purchase of commodities valued at \$500 or more

Procurement of purchase commodities valued at \$500 or more are solicited by a PeopleSoft requisition that is electronically forwarded to the DOA - Procurement Service for processing.



4. Procurement Card - Purchase of commodities valued at less than \$5000

Procurement of purchase commodities valued less than \$5000 are solicited by vendors listed on the City's Valued Supplier list. The procurement card solicitation process cannot be used to purchase inventory items and items on a vendor contract.

B. DPW Small No-Bid Procedures for Services

1. Small Dollar Service Purchases valued at \$2,000 or less

Procurement for services valued at \$2,000 or less is made by one or more price quotes. If the lowest compliant quote exceeds the dollar range for the small dollar purchase option, another option can be chosen. The Small Dollar Purchase option cannot be used for procurement contracts or Procard purchases.

2. Procurement Card Purchases valued at \$5,000 or less

Procurement of services valued at \$5000 or less are solicited by vendors listed on the City's Valued Supplier list. The procurement card solicitation process cannot be used to purchase services that are available through a procurement contract.

3. Purchasing Authority valued at \$25,000 or less

Procurement of services valued at \$4,999 or less are made by the User Department by one or more telephone bids.

Procurement of services valued between \$5,000 to \$9,000 are made by the User Department by three telephone bids.

Procurement of services valued between \$10,000 to \$14,999 are made by the User Department by three written bids.

Procurement of services valued between \$15,000 to \$25,000 are subject to informal contract bidding regulations.

4. Purchasing Authority Formal Contract valued at more than \$25,000

Procurement of services valued at more than \$25,000 are subject to the DPW Professional Services Contracting Procedures.



C. DPW Procurement Procedures for Service Orders

1. Service Orders valued at \$5,000 or less

Procurement of service orders valued at \$5,000 or less are obtained by one or more telephone bids, with the low bid in writing.

2. Service Orders valued between \$5,000 and \$24,000

Procurement of service orders between \$5,000 and \$24,000 are obtained by three telephone bids, with the low bid in writing. Service orders valued over \$10,000 should be solicited by three written bids.

All service orders where the low bid is not the determining fact in awarding the contract, documentation detailing how the vendor was chosen is required.

D. DPW Professional Services Contracting Procedures

Procurement of professional services contracts valued at more than \$25,000. Professional services contracting procedures are used when the service required is professional, artistic, scientific, or creative. It is also used when it may be impossible or impractical for the City to develop precise bidding specifications, or if the project is experimental in nature.

Members of a selection panel evaluate the submitted proposals. The selection panel is convened by the Project Manager and confirmed by the Division Director. The evaluation criteria and the weight to be given each criterion is established when the RFP is prepared and is included in the RFP. The following selection criteria are always considered:

- i. The quality and completeness of the consultant's proposal;
- ii. The experience of the consulting firm (or firms if there will be subconsultants) in doing the kind of work being requested;
- iii. The experience of the consultant staff who will be assigned to the project;
- iv. The cost of the consultant's proposed services;



- v. The level of Emerging Business Enterprise participation in the consulting services.

At least three top-ranking consultants are interviewed for the DPW's professional services contracts exceeding \$50,000 or exceeding \$100,000. In most cases, the highest ranked consultant is selected. In the event the highest ranked consultant is not selected, the Project Director will prepare a written statement explaining the reasons for the panel's decision. It is recommended that at least three top-ranking consultants are interviewed for DPW's professional services contracts exceeding \$50,000. It is required that the three top-ranked consultants are interviewed for DPW's professional services contracts exceeding \$100,000.

E. DPW Construction Contracting Procedures

Procurement of construction services valued more than \$25,000

Procurement of the DPW's construction services valued at more than \$25,000 must be advertised. A plan or profile of the work to be done and specifications must be placed on file in the Office of the Commissioner for the information of bidders and others. The bid is advertised for at least five days in the official City newspapers. The advertisement includes the work to be done and the time period for doing the work.

All bids/proposals are sealed and directed to the Commissioner. The submitted bids/proposals must be accompanied with a bid bond of a surety company licensed to do business in the State of Wisconsin, addressed to the City of Milwaukee in a sum not less than 10 percent of the amount of the bid. A bid bond is not required of a bidder who deposits with the Commissioner of Public Works cash or a certified check equal to 10 percent of the bid.

All construction contracts are awarded to the lowest responsible bidder who is in compliance with all bid requirements. The construction project and its detailed cost estimate are evaluated to determine Emerging Business Enterprise, Residents Preference Program, and apprenticeship requirements.

VI. SPECIAL PROCUREMENT PROGRAMS

A. Emerging Business Enterprise Program

The Emerging Business Enterprise Program (EBE) was created to assist and protect the interests of individuals who are disadvantaged and small business concerns in order to promote and encourage full and open competition in the City of Milwaukee. In 2002, Chapter 360 of the Milwaukee Code of Ordinances was revised to utilize city-certified EBEs in all contracting activities. The revision was approved by the Common Council and signed by former Mayor John



O. Norquist, setting an annual 18 percent EBE utilization requirement for each contracting department, and all other operating departments when contracting based upon authority.

Under the direction of the Department of Administration, the EBE administration is administered by an EBE manager. The manager is appointed by the Mayor and is confirmed by the Common Council. The EBE manager is charged with various responsibilities including:

- Establishing the criteria and procedures for reviewing contract performance and compliance with the requirements of the EBE program
- Developing appropriate rules, procedures and regulations for assuring EBE participation in City contracts
- Developing certification procedures
- Providing management assistance and direction to EBEs to maximize their participation in City contracts
- Developing a reporting and evaluation system
- Reviewing and monitoring all City contracts with EBE requirements for compliance
- Serving as a liaison with economic development organizations
- Coordinating any City-sponsored economic development programs for EBEs
- Reviewing EBE participation progress in City contracts and procurement activities
- Establishing reporting requirements for all City departments to document the percentage of contracts which have been awarded to EBEs
- Developing and monitoring affirmative action criteria for employment of minorities and women by contractors, subcontractors and suppliers.

1. Emerging Business Enterprise Certification

The EBE administration set forth criteria for determining which individuals or businesses are considered disadvantaged. Chapter 360 defines an economic disadvantage as an inability to compete in the free enterprise system due to diminished capital, credit or bonding opportunities. The following factors are considered in determining whether an individual has been economically disadvantaged:

- Failure to accumulate adequate business capital or obtain sufficient credit to start or support a business concern



- Failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by non-disadvantaged individuals
- Failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business
- Business has no more than 15 employees and its average annual receipts do not exceed \$1 million
- Gross annual receipts are 30 percent less than the standards set forth by the United States Small Business Administration (SBA).

2. Emerging Business Enterprise Goals

All City contracting departments and all other contracting authorities must utilize 18 percent of the total dollars through prime contracts or subcontracts, annually expended on:

- Construction contracts
- Purchases of services
- Professional services
- Supplies

The EBE manager annually reviews and adjusts the percentage goals with the approval of the Common Council. Each User Department submits to the Procurement Services Section requisitions that are forwarded to the EBE department for review and recommendation of EBE participation prior to bidding or awarding a contract. This includes Procurement Services' formal bids (in excess of \$30,000) and informal bids (less than \$30,000), Exception to Bid Requests, Amendment Requests, (including Requests for Proposals and sole source requests), and requisitions with JumpStart quotes less than \$10,000. Additionally, it includes DPW's bids/RFPs for services valued at \$25,000 or more and construction services valued at \$25,000 or more.



VII. SPECIAL PROCUREMENT REQUIREMENTS

A. Living Wage Requirements

The City of Milwaukee adopted Ordinance 310-13 which establishes a living wage requirement for persons employed in the performance of certain service contracts for the City. Additionally, this ordinance requires the City Clerk to annually adjust the minimum hourly wage amount based on the most recent poverty guidelines for family of three as set by the United States Department of Health and Human Services.

B. Residents Preference Requirements

A residents preference hiring is required for all construction contracting activities of the Department of Public Works in accordance with Chapter 309 of the Milwaukee Code of Ordinances.² The ordinance requires that a minimum of 21 percent of worker hours be performed by unemployed residents of the Community Development Block Grant Area (CDBG).³

Developers are required to prepare and submit accurate and timely resident utilization forms and reports to the Department of Public Works. The report must itemize by job classification the proposed total worker hours, and proposed number of non-CDBG worker hours the contractor plans to utilize to complete the contract.

Failure to submit the required forms and reports to the Department of Public Works can result in disqualification of future bids, delay of payments, or other appropriate sanctions. The developer is required to sign an affidavit of compliance form which certifies that the contractor understands the provisions of the Residents Preference Program. Final contract payments are not be made until

² A resident is defined as a person who maintains his or her place of permanent abode in the CDBG area within the City of Milwaukee. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the special impact area. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitations, the location where a person votes, pays personal income taxes, or obtains a driver's license.

³ The CDBG is defined as that portion of the City of Milwaukee designated as such by the Common Council which is identified by census tracts on maps maintained at the offices of the City Clerk and the Commissioner of City Development. Unemployed is defined as a resident that has worked less than 1,200 hours in the preceding 12 months or has not worked in the preceding 30 days or has qualified since the inception of the Residence Preference Program. A CDBG resident will continue to qualify as unemployed for five or ten years from the date he or she first participates in a contract under the Development Agreement for the specified development project.



the summary of hours worked on the back of the Prime Contractor's Affidavit of Compliance is completed and on file with the Department of Public Works.

The Department of Public Works reserves the right to conduct compliance reviews during the performance of the contract. If the developer is not in compliance with the specifications, the Commissioner of Public Works will notify the contractor in writing of the corrective action that will bring the developer into compliance. If the developer fails or refuses to take corrective action as directed, or if the contractor, prime or subcontractor, submits any documents which contain any false, misleading, or fraudulent information, or if the developer or its contractor or subcontractor fail to comply with the Ordinance, the Department of Public Works may withhold payments on the contract, terminate or cancel the contract, in whole or in part, any other remedy available to the City at law or in equity.

C. Slavery Disclosure Requirements

The City of Milwaukee adopted Ordinance 310-14 requiring the disclosure of participation in or profits derived from slavery by contractors. All contractors awarded a contract on behalf of the City are required to complete an affidavit prior to entering into the contract verifying that the contractor searched any and all records of the company and/or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any enslaved persons or slave-holders described in those records must be disclosed in the affidavit.

The Slavery Disclosure affidavit must be completed regardless of the contract dollar amount or whether or not it was subject to a competitive bid. All City awarding authorities must include in their bids/RFPs language informing companies that the successful vendor will be required to submit the Slavery Disclosure affidavit.

D. Clean Clothing Requirements

The City of Milwaukee adopted Ordinance 310-17 which requires all contracts over \$5,000 for the purchase, rental, laundering and dry cleaning of apparel, entrance mats and linens are not manufactured in sweatshops.

City contracting departments cannot enter into contracts for purchasing, renting, laundering and dry cleaning of items of apparel unless the lowest responsible bidders first submit to the Purchasing Director affidavits of compliance for procurement of items of apparel from responsible manufacturers.

Any bidder who indicates that they will not comply with Ordinance 310-17 will be rejected as non-complying. If no bidders are in compliance with the Ordinance, the provision may be waived by City Purchasing and/or rebid.



E. Insurance Requirements

The different types of insurance coverage required by the City of Milwaukee include:

- Comprehensive General Liability
- Worker's Compensation and Employer's Liability
- Automotive Liability
- Excess Liability
- Garage Liability/Garage Keeper's Liability
- Professional Liability (\$1,000,000 for Errors and Omissions)
- Banker's Blanket Bond
- Employee Dishonesty
- Product Liability
- Pollution

All vendors are required to provide evidence of insurance coverage for most service contracts, which involve installation or work being performed at a City-owned facility and for some commodity contracts for equipment, which involve the installation of accessories or additional equipment on a City-owned vehicle. A notarized Affidavit of No Interest form must be completed and signed by the insurance agent who issues the Certificate of Insurance to be submitted with the Certificate of Insurance.

The City Attorney's office sets the limits for comprehensive general, automobile and professional liability insurance based on the nature of the contract. User departments normally include and/or set the limits for Excess/Umbrella liability, General liability, Pollution liability and Professional liability coverage for certain types of service contracts due to their complexity of the project and/or exposure of the City. The liability coverage limits for worker's compensation and employer's liability insurance is statutory. Garage liability coverage only applies to equipment being assembled, and the insurance coverage must be equal to the equipment value.



2

CERTIFICATION COMPARISON ANALYSIS

I. INTRODUCTION

The City of Milwaukee (City) wants to determine the propriety of streamlining its Emerging Business Enterprise (EBEs) certification process. The purpose of this analysis is to determine the feasibility of the City implementing reciprocity procedures by accepting business enterprise certifications issued by other local agencies.

II. METHODOLOGY

The research approach employed in this analysis included an examination of local certifying agencies in the City of Milwaukee area. The examination was conducted in order to assess the EBE Program's certification process effectiveness. A thorough review of local certifying agencies' certification objectives and standards were conducted to determine whether the City's EBE certification procedures can be streamlined in respect to the appropriateness of reciprocity with other local agencies. A comparison of the certification requirements of other local agencies to the City's EBE certification requirements was administered to determine which objectives and standards are closely commensurate with the City's program objectives and criteria. The Emerging Business Enterprise Program certification objectives and standards were compared in a qualitative analysis to seven other certifying agencies in the Milwaukee area, with a total of 15 certification programs in total.

The criteria for the selection of agencies to be examined included certification requirements that were governed by rigorous, uniform and legal regulatory standards. Thus, an examination of the following seven local certifying agencies which included 16 business enterprise programs, was conducted.



Federal Agencies

1. The Small Business Administration

- (a) 8(a) Program
- (b) Small Disadvantaged Business Program
- (c) Historically Underutilized Business Zone Empowerment Contracting Program

State and Local Agencies

1. Wisconsin Department of Transportation

- (a) Disadvantaged Business Enterprise Program
- (b) Minority Business Enterprise Program

2. The City of Madison,

- (a) Small Business Enterprise Program
- (b) Minority Business Enterprise Program
- (c) Women Business Enterprise Program
- (d) Disadvantaged Business Enterprise Program

3. The County of Milwaukee - Disadvantaged Business Enterprise Program

4. The County of Dane

- (a) Emerging Small Business Enterprise Program
- (b) Minority Business Enterprise Program
- (c) Women Business Enterprise Program
- (d) Disadvantaged Business Enterprise Program



5. Wisconsin Department of Commerce - Minority Business Certification
6. Milwaukee Metro Sewerage District - Small Business Enterprise

A. City of Milwaukee Certification Standards

1. Program Background and Objective

The City of Milwaukee established an Emerging Business Enterprise (EBE) Program pursuant to Chapter 360 of the Milwaukee Code of Ordinances. The objective of the EBE Program is to assist and protect the interest of emerging and small business concerns and to encourage full and open competition in the City of Milwaukee. Certification standards for EBEs are specified by the EBE Administration. All City contracting departments and all other contracting authorities must utilize 18 percent of the total dollars through prime contracts or subcontracts annually expended on the following:

- Construction contracts
- Purchases of services
- Professional services
- Supplies

The EBE manager annually reviews and adjusts the percentage goals with the approval of the Common Council.

2. Certification Standards

An EBE is defined as a small business concern¹ that is owned, operated, and controlled by one or more individuals who are at a disadvantage. The individuals must have day-to-day operational and managerial control and interest in capital, financial risks, and earnings commensurate with the percentage of their ownership. The EBE applicant must be a 51 percent business owner who is a citizen or lawful permanent resident of the United States and who has or continues to experience

¹ “Small business concern” means a business which is independently owned, operated, and controlled, which is not dominated in its local field of operation and which has had annualized gross receipts consistent with the receipts based size standards set forth by the Federal Small Business Administration. A business which does not meet these requirements may nonetheless be deemed a small concern if the business establishes by credible evidence that different standards should be applied in its field of endeavor.



substantial difficulty in achieving business-related success. The business owner must also be at an economic disadvantage and meet three out of the five criteria listed below:

- 1 At a disadvantage with respect to education,
- 2 At a disadvantage with respect to employment,
- 3 At a disadvantage with respect to residence or business location,
- 4 At a social disadvantage, or
- 5 Lack of business training.

Chapter 360 of the Milwaukee Code of Ordinances defines an economic disadvantage as an inability to compete in the free enterprise system due to diminished capital, credit, or bonding opportunities. The following factors are considered in determining whether an individual has been economically disadvantaged:

- Failure to accumulate adequate business capital or obtain sufficient credit to start or support a business concern
- Failure to acquire business-related credit or bonding under terms or circumstances as favorable as those generally experienced by non-disadvantaged individuals
- Failure to receive awards or bids of governmental contracts despite competitive pricing or other similar factors which have disadvantaged the applicant in the development of a business
- Business has no more than 15 employees and its average annual receipts do not exceed \$1 million
- Gross annual receipts are 30 percent less than the standards set forth by the United States Small Business Administration (SBA)



III. EXAMINATION OF LOCAL CERTIFYING AGENCIES

A. The Small Business Administration Certification Standards

On July 30, 1953, the United States Congress established the Small Business Administration (SBA) with the passage of the Small Business Act. The purpose of the SBA is to "aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns." The SBA is also charged the responsibility of ensuring "fair proportion" of government contracts and sales of surplus property to small business.

1. 8(a) Certification

a. Program Background and Objective

The objective of the Small Business Administration's (SBA) 8(a) Business Development Program is to help eligible small, disadvantaged businesses become independently competitive in the federal procurement market. Certified 8(a) firms automatically qualify for Small Disadvantaged Business (SDB) certification. The SBA's enrollment requirements for 8(a) certification are similar to that for SDB certification, with the exception that an applicant's personal net worth is less than \$250,000 (excluding the applicants's ownership interest of the business and primary residence).

Certified 8(a) firms are provided technical assistance by the SBA and its resource partner including specialized business training, counseling, marketing assistance, and high-level executive development provided. SBA-guaranteed loans and bonding assistance are available for eligible 8(a) firms as well. Additionally, 8(a) certified firms are eligible to participate in the SBA's Mentor-Protégé Program.

b. Certification Requirements

The Program requirements for 8(a) certification include the following:

1. The applicant firm must be a small business

A small business concern is defined as one that is independently owned and operated, organized for profit, and not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on the volume of sales averaged over a three-year period.



Examples of SBA general size standards include the following:

- Manufacturing: Maximum number of employees may range from 500 to 1500, depending on the type of product manufactured.
- Wholesaling: Maximum number of employees may range from 100 to 500 depending on the particular product being provided.
- Services: Annual receipts may not exceed \$2.5 to \$21.5 million, depending on the particular service being provided.
- Retailing: Annual receipts may not exceed \$5 to \$21 million, depending on the particular product being provided.
- General and Heavy Construction: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction.
- Special Trade Construction: Annual receipts may not exceed \$7 million.
- Agriculture: Annual receipts may not exceed \$0.5 to \$9 million, depending on the agricultural product.

2. Must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals who are of good character and citizens of the United States

The SBA defines socially disadvantaged individuals as those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must stem from circumstances beyond their control. In the absence of evidence to the contrary, individuals who are members of the following designated groups are presumed to be socially disadvantaged:

- Black Americans,
- Hispanic Americans,
- Native Americans (American Indians, Eskimos, Aleuts, and Native Hawaiians),
- Asian Pacific Americans persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Commonwealth of the Northern Mariana Islands, Laos, Cambodia (Kampuchea), Taiwan;



Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, Federated States of Micronesia, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru,

- Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal), and
- Members of other groups designated by the SBA.

The SBA defines economically disadvantaged individuals as socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities.

To determine whether the applicant is economically disadvantaged, the SBA will consider factors such as the individual's net worth, after excluding the individual's equity in the firm and the equity in the primary residence, which may not exceed \$250,000. The SBA will also consider the individual's average two-year income, fair market value of all assets, access to credit and capital, and the financial condition of the applicant firm in evaluating economic disadvantage.

The SBA requires that at least 51 percent of the applicant firm is directly and unconditionally owned by socially and economically disadvantaged individuals. Control is not the same as ownership, although both control and ownership may reside in the same person. Control includes both strategic policy setting and the day-to-day management and administration of business operations by disadvantaged individuals.

3. Must demonstrate potential for success

The SBA will evaluate the following factors to determine whether an applicant firm has potential for success:

- The technical and managerial experience of the applicant firm's managers
- The firm's operating history
- Ability of the firm to access credit and capital
- The firm's financial capacity
- The firm's record of performance
- Whether the applicant firm or individuals employed by the firm hold the requisite licenses if the firm is engaged in an industry requiring professional licensing



Additionally, the applicant firm must have been operational for at least two full years, which can be evidenced by business income tax returns for each of the two previous tax years. The SBA will review the tax returns to determine whether the applicant firm had operating revenues in the primary industry in which the applicant firm is seeking 8(a) certification.

2. Small Disadvantaged Business Certification

a. Program Background and Objective

On August 24, 1998, the Small Disadvantaged Business (SDB) Program was implemented where to fulfill its objective of providing equity in contracting with small businesses. The SDB Program encompasses small businesses owned and controlled by individuals that are determined to be socially and economically disadvantaged as well. The program certifies small businesses that meet specific social, economic, ownership, and control eligibility criteria as small disadvantaged businesses.

In *Adarand Contractors, Inc. vs. Pena*², the Supreme Court extended strict judicial scrutiny to include federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The *Adarand* Court held that under strict scrutiny, any Federal program that makes race a basis for contract decision making must be narrowly tailored to serve a compelling government interest. Thus, the SDB Program was designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand*.

The Small Business Administration utilizes the SDB Program as a procurement tool to assist the government in finding firms capable of providing needed procurement services and helping to address the traditional exclusion of minority-owned firms from contracting opportunities.

b. Certification Requirements

The requirements for SDB certification are governed by the Code of Federal Regulations. For a small business to be certified as an SDB, the following requirements must be met:

- Must be a United States citizen
- Must be a small disadvantaged business which qualifies as small business under Chapter 13, Code of Federal Regulation (CFR) Part 121, for the size standard corresponding to the applicable four digit Standard Industrial Classification (SIC) code
- Is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individual(s) as defined by Chapter 13, CFR 124.105, and



² *Adarand Contractors, Inc. v. Federico Pena*, 115 S.Ct. 2097 (1995).

- The majority of the business' earnings must accrue directly to the socially and economically disadvantaged individual(s) who own the business.

3. **HUBZone PROGRAM**

a. Program Background and Objective

The Small Business Reauthorization Act of 1997 enacted the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. The program is regulated by the SBA which also implemented the program. The objective of the Program is to stimulate economic development and create jobs in urban and rural communities by providing federal contracting preferences to small businesses. The SBA also determines which businesses are eligible to receive HUBZone contracts, maintains a listing of qualified HUBZone small businesses that federal agencies can use to locate vendors, and adjudicates protests of eligibility to receive HUBZone contracts.

The HUBZone Program applies to all federal departments and agencies and has set the government-wide prime contracting goal at three percent. Preferences are given to small businesses that obtain HUBZone certification in part by employing staff who live in a particular HUBZone.

b. Certification Requirements

To qualify as a HUBZone business the following criteria must be met:

- It must be a small business by SBA standards
- It must be owned and controlled at least 51 percent by U.S. citizens, a Community Development Corporation, or an agricultural cooperative, or an Indian tribe
- Its principal office must be located within a Historically Underutilized Business Zone, which includes lands considered as Indian Country and military facilities closed by the Base Realignment and Closure Act
- At least 35 percent of its employees must reside in a HUBZone for at least 180 days or be a currently registered voter in that area.



B. Wisconsin Department of Transportation Certification Standards

1. Disadvantaged Business Enterprise Program

a. Program Background and Objective

The Disadvantaged Business Enterprise (DBE) Program started with the Surface Transportation Assistance Act of 1982. The Wisconsin Department of Transportation (WisDOT) DBE Program's objective is to increase participation of firms owned by disadvantaged individuals in all federal aid and state transportation facility contracts. The act set a national goal of placing at least ten percent of federal highway and transit funds with persons who qualify as disadvantaged small business operators.

b. Certification Requirements

Any small business that is at least 51 percent owned, operated, and fully controlled on a daily basis by a member or members of the following groups qualifies. In the case of publicly held firms, a member or members of the listed groups must own at least 51 percent of the stock issued. These groups include These groups include African Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and women.

WisDOT may determine that individuals who are not members of the above groups may be socially and economically disadvantaged. WisDOT makes such determinations on a case-by-case basis.

2. Minority Business Enterprise Program

a. Program Background and Objective

The WisDOT Minority Business Enterprise (MBE) Program's objective is to provide new or expanded opportunities for qualified minority-owned businesses to sell their goods and services to the department. The MBE Program includes the procurement of supplies and services with state funding, while the federal DBE Program targets highway construction spending to minority and women-owned businesses.

State departments and agencies are required to attempt to ensure that at least five percent of their total spending is paid to certified minority businesses, pursuant to Wisconsin Statute 16.75 (3m) (b). Certified MBEs are eligible for a low-bid preference as long as their bid is no higher than five percent of the lowest qualified responsible bidder. MBEs are also eligible for technical and marketing assistance and are listed in the state of Wisconsin's Directory of Minority-Owned Businesses, which is circulated to corporate buyers throughout the United States and state purchasing agents.



b. Certification Standards

The following criteria must be met to be certified as minority-owned business (sole proprietorship, partnership, corporation, or joint venture):

- Member of an ethnic minority group: Native American, Black, Hispanic, Asian Indian, Asian Pacific, Aleut, Eskimo, or Native Hawaiian. (WisDOT does not recognize women as minorities. Therefore, women-owned businesses are not eligible for minority certification.)
- Be at least 51 percent owned, controlled and actively managed by minority group members.
- Serve a useful business function and have customers other than the state of Wisconsin, and
- Must be at least one year old under current ownership.

C. City of Madison Certification Standards

1. Program Background and Objective

In 1991, the City of Madison implemented its Small Business Enterprise (SBE) Program. The objective of the City's SBE Program is to stimulate economic growth, promote the establishment of new businesses, and provide employment opportunities. An affirmative action plan was adopted by the City of Madison requiring similar efforts from vendors, contractors, and other firms with which it does business. The City of Madison has an overall goal of ten percent of the City's public works funds, which must be expended with certified small business enterprises (SBEs). The City of Madison created the MAD certification Program to certify businesses as SBEs for participation on the City's projects with targeted business goals.

The City's bid documents specify which targeted business (MBE, WBE, DBE, and/or SBE) will be targeted for a specific contract. The targeted business type is determined by the source of funding. Public works contracts estimated to cost \$100,000 or more and are funded solely with City dollars have an SBE goal attached. Projects funded by federal dollars have an MBE, WBE, and/or DBE goal attached.

2. Certification Requirements

The City of Madison operates four separately targeted business certification programs. The following are the general eligibility criteria for each targeted business type:

- Small Business Enterprise (SBE): an independently owned and controlled business with annual gross receipts of \$750,000 or less when averaged over the past three years.



- Minority Business Enterprise (MBE): an independent business 51 percent or more owned and controlled by racial/ethnic affirmative action group members.
- Woman Business Enterprise (WBE): an independent business 51 percent or more owned and controlled by women.
- Disadvantaged Business Enterprise (DBE): an independent business 51 percent or more owned and controlled by socially and economically disadvantaged individuals. Size restrictions as regulated by the U.S. Small Business Administration in 13 CFR apply.

D. County of Dane Certification Standards

1. Program Background and Objectives

The County of Dane administers its Contract Compliance Program pursuant to Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances. The County's Contract Compliance Program's objective is to enforce and monitor prime contractor's performance regarding the workforce representation of protected groups and/or members. The program also monitors the participation and contracting opportunities for emerging small businesses, minority, women, disadvantaged owned businesses.

2. Certification Requirements

Dane County issues the following business enterprise certifications:

- Emerging Small Businesses (ESB): an independent business concern that has been in business for at least one year. The business must be located within the State of Wisconsin and be comprised of less than 25 employees. The applicant business must not have gross sales in excess of three million dollars over the past three years and not have a history of failing to complete projects.
- Minority Business Enterprise (MBE): an independent and valid business concern that is owned and controlled by minority persons. The minority person must own 51 percent of the business and control the management and daily operation of the business.
- Women Business Enterprise (WBE): an independent and valid business concern that is owned and controlled by women who own 51 percent of the business and control the management and daily operation of the business.
- Disadvantaged Business Enterprises (DBE): a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Or, in the case of any publicly owned business, at least 51 percent of the stock must be owned by one or more



socially and economically disadvantaged individuals. The socially and economically disadvantaged individual must also manage the daily operations of the business.

E. County of Milwaukee Certification Standards

1. Program Background and Objectives

The County of Milwaukee implemented a Disadvantaged Business Enterprise (DBE) Program to fulfill its objective of increasing the overall economic viability for small and disadvantaged businesses in Milwaukee County. The DBE Program is administered by the Community Business Development Partners (CBDP). The CBDP is charged with the responsibility of establishing goals, certifying firms, monitoring and enforcing contract compliance, and promoting business opportunities for DBEs.

2. Certification Requirements

The County's DBE certification requirements are in accordance with the Federal Department of Transportation DBE Program requirements set forth in 49 Code of Federal Regulations, Part 26. The general eligibility requirements include the following criteria:

- Applicant business must be at least 51 percent owned by a socially and economically disadvantaged individual
- The owner must be a part of a disadvantaged group such as women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the United States Small Business Administration³
- The applicant firm must meet the small business size standards defined by SBA standards. The business must not have annual gross receipts over \$19.57 million in the previous three fiscal years,
- The disadvantaged owner must not have a personal net worth of less than \$750,000, excluding his or her ownership interest in the applicant firm and equity in his or her primary residence.
- The disadvantaged owner must possess the power to direct or cause the direction of the management and policies of the firm. The owner must also have an overall understanding of the managerial and technical competence of the applicant firm and have the experience directly related to the type of business in which the applicant firm is engaged.



³

Persons who are not members of one of the above groups and own and control their business may also be eligible if they establish their social and economic disadvantage.

F. Department of Commerce Certifications Standards

1. Program Background and Objective

The Wisconsin Department of Commerce created a Minority Business Certification Program with the objective of increasing the opportunity for minority firms to sell their products and services to the State of Wisconsin. The Wisconsin Department of Administration monitors state agencies' compliance with the purchasing guidelines that have been established for minority business procurement through Wisconsin Act 390. The Act authorizes certified minority businesses to be eligible for a five percent bid preference. Certified bidders must be within five percent of the lowest qualified responsible bidder.

Certified minority-owned firms are eligible for a low-bid waiver as long as their bid is no higher than five percent of the lowest qualified responsible bidder. Certified minority-owned firms are eligible for technical and marketing assistance, including participation in Marketplace, which is a statewide minority business marketing conference sponsored by the Wisconsin Department of Commerce.

2. Certification Standards

The eligibility requirements for minority-owned business certifications (sole proprietorship, partnership, corporation, or joint venture) are the following:

- Must belong to one of the following ethnic minority groups: Native American, Black, Hispanic, Asian Indian, Asian Pacific, Aleut, Eskimo, or Native Hawaiian. (The Department does not currently recognize women as minorities. Therefore, women-owned businesses are not eligible for certification through the Department at this time.)
- Be at least 51 percent owned, controlled, and actively managed by minority group members.
- Serve a "useful business function" and have customers other than the State of Wisconsin.
- Must be at least one year old under current ownership.

G. Milwaukee Metro Sewerage District Certification Standards

1. Program Background and Objectives

The Milwaukee Metro Sewerage District (District) established policies pursuant to Commission Policy 1-78.01 - General Procurement, to meet its objective of maximizing opportunities for small, women, and minority businesses pursuant to its commitment to these business enterprises. The



District established procurement goals of 13 percent for MBEs, five percent for SBEs, and two percent for WBEs. The District certifies qualified applicants as small business enterprises and accepts MBE and WBE certifications from other local agencies.

2. Certification Standards

The District certifies small businesses under its Small Business Enterprise Program. The small business must have a gross income of 2.5 million dollars or less for the prior twelve month period. The District accepts other business enterprise certifications for women or minority business enterprises. Those business enterprise certifications include:

- Joint Certification Program: The District recognizes existing certifications determined by the now defunct program until the certification expiration date.
- Wisconsin Department of Commerce: The District recognizes existing certifications from the Wisconsin Department of Commerce Minority Business Certification Program.
- Wisconsin Department of Transportation: The District recognizes certifications of disadvantaged businesses by the Wisconsin Department of Transportation, provided that they reflect disadvantaged minority or gender status.
- Milwaukee County: The District recognizes certifications of disadvantaged business enterprises by Milwaukee County, provided that they reflect disadvantaged minority and gender status.
- Wisconsin Minority Supplier Development Council: The District recognizes certifications of minority-owned enterprises by the Wisconsin Minority Supplier Development Council.
- Women's Business Educational Consortium, Inc.: The District recognizes certifications of women-owned minority businesses by the Women's Business Educational Consortium, Inc.
- Small Business Administration: The District recognizes certifications of small disadvantaged businesses by the Small Business Administration, provided that they reflect disadvantaged minority and gender status.

IV. SUMMARY OF CERTIFICATION COMPARISON ANALYSIS FINDINGS

The objective of the City's EBE program is to assist and protect the interest of emerging and small business concerns and to encourage full and open competition in the City of Milwaukee. The City's EBE eligibility requirements are governed by Chapter 360 of the Milwaukee Code of Ordinances which authorizes the City to set forth rigorous certification standards. The certification comparison analysis determined that out of the 16 business enterprise programs examined, eight



business enterprise certifications have standards and objectives that are closely commensurate with the City's EBE certification standards and objectives.

The objective of all eight business certifications is to certify small, emerging, and/or economically disadvantaged businesses pursuant to rigorous and uniform legal regulations. Each of the eight programs met the majority of the City's EBE certification requirements as follows:

- Small businesses must be independently owned, operated, and controlled.
- Applicant must be at least a 51 percent business owner, who is a citizen or lawful resident of the United States.
- Applicant business must be at an economic disadvantage which can be met by three out of the five following criteria:
 - Disadvantaged with respect to education
 - Disadvantaged with respect to employment
 - Disadvantaged with respect to residence or business location
 - At a social disadvantage
 - Lack of business training
- Applicant business has no more than 15 employees and average annual receipts that do not exceed \$1 million
- Applicant business has gross annual receipts that are 30 percent less than the standards set forth by the United States Small Business Administration

V. PROGRAM RECOMMENDATIONS

In reviewing the federal certification regulations and those of several local certification agencies, the City should consider reciprocity with the following certification programs outlined in Table 2.01 below:



Table 2.01 Recommended Local Certification Agencies

CERTIFYING AGENCY	GOVERNING AUTHORITY FOR CERTIFICATION REQUIREMENT
Small Business Administration - Small Disadvantaged Business Certification	Chapter 13 Code of Federal Regulations
Small Business Administration - Section 8(a) Certification	Chapter 13 Code of Federal Regulations
City of Madison - SBE and DBE Certification	Madison General Ordinance 3.58(8)
County of Dane - Emerging Small Business Certification	Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances
County of Dane - Disadvantaged Business Certification	Chapter 19, Subchapter 11, section 19.50-19.71 of the Dane County Ordinances
County of Milwaukee - Disadvantaged Business Certification	49 Code of Federal Regulations, Part 26
Milwaukee Metro Sewerage District Small Business Enterprise Certification	Commission Administrative Policy 1078.01
Wisconsin Department of Transportation Disadvantaged Business Enterprise Certification	Title 49 of the Federal Regulations, Parts 23 and 26

The certified lists of these agencies represent a readily available pool of small, emerging, and disadvantaged business enterprises to participate on City contracts. Using these already existing lists avoids the time, resources, and cost of extensive outreach efforts to recruit firms to participate in City contracting. In addition, small businesses will not have to expend the resources for obtaining additional certifications.

Furthermore, several of the certification requirements of the recommended agencies have a race and gender-conscious program and size restrictions. To be certified by the City, a business must be economically disadvantaged, which is determined by annual gross revenues. This contingency is similar to the requirements for small business certification in the aforementioned local certification programs.

The City could require firms to provide additional records identifying their official business location at the time of bid opening or proposal submission. The City can also accept the official location listed on the certification, which was verified by the certifying agency.



The standards in the recommended certification programs are rigorous, uniform, and governed by legal authority. The City can be confident that firms certified by the aforementioned agencies are bonafide small, emerging, and disadvantaged business enterprises. The recommended local certifying agencies have comparable certification requirements as delineated in Table 2.02 below.

Table 2.02 Comparisons of Recommended Local Certification Agencies

Agency	Small Business Concern	Owner US Citizen	Economic Disadvantage	Annual Receipts \$1 million or less	Gross Annual Receipts Meets US SBA Standards
Small Business Administration - Small Disadvantaged Business Certification	✓	✓	✓		✓
Small Business Administration - Section 8(a) Certification	✓	✓	✓		✓
City of Madison - SBE and DBE Certification	✓	✓	✓	✓	✓
County of Dane - Disadvantaged Business Certification	✓	✓	✓		✓
County of Milwaukee - Disadvantaged Business Certification	✓	✓	✓		✓
Wisconsin Department of Transportation Disadvantaged Business Enterprise Certification	✓	✓	✓		✓

The City's EBE certification standards include requirements aimed at ensuring potential certified businesses bone fide small, emerging, and disadvantaged firms. The program's size and disadvantaged requirements are sufficient to meet this purpose. To enhance the City's EBE certification program it is recommended that the City implement reciprocity with other local agencies to alleviate the costs of business enterprise certifications on small and emerging businesses.

The process to be certified as a small, emerging and disadvantaged business is duplicated at the state, local, and special district levels. The City should amend its certification requirements to allow reciprocity with the recommended governmental agencies to help businesses avoid duplicating paperwork. The City can be assured of offering procurement opportunities to small, emerging and disadvantaged businesses that have already met specifically defined eligibility requirements comparable to the City's certification requirements. Reciprocity partnerships will allow small, emerging, and disadvantaged businesses to participate in multiple small business programs without the cost burdens associated with individual certification requirements.



3

SUBCONTRACTING EVALUATION

I. INTRODUCTION

The purpose of the assessment was to evaluate existing policies to determine if adequate protections exist for businesses that subcontract with prime contractors. The assessment was also a means of formulating recommendations to improve the City of Milwaukee's (City) policies and procedures pertaining to subcontractors.

II. METHODOLOGY

The assessment was undertaken by analyzing the City's policies, procedures and practices concerning subcontracting to examine whether proper controls have been implemented to ensure fair treatment of subcontractors. A comprehensive review of the City's procurement policies, statutes and ordinances was analyzed, which included the following:

- Chapter 7: Commissioner of Public Works
- Chapter 16: Boards and Commissions; Purchasing
- Chapter 81-102.3: Purchasing Appeals
- Chapter 105-65.4: Disposal of Unclaimed Vehicles and Trailers
- Chapter 310: Department of Administration



- Chapter 360: Emerging Business Enterprise Program
- Wisconsin State Statutes,
Subchapter IV, Section 16: Purchasing.

The results of the analysis determined that the City does not have uniform policies or procedures for all departments within the City that ensures adequate protection for subcontractors. Some departments had procurement procedures that were aimed to protect the interest of subcontractors while other departments had no procedures in place. Thus, the City should develop uniform procedures aimed at protecting the interest of subcontractors for all City departments with procurement authority. Enhancements to the City's subcontracting procurement procedures is recommended to safeguard subcontractors, which are typically small, minority and woman-owned businesses, from business practices that can be detrimental to the survival of those businesses.

III. ENHANCEMENT OF THE CITY'S SUBCONTRACTING PROCUREMENT PROCEDURES

A. Require Prime Contractors to List Subcontractors on Bid Documents on Department of Public Works Contracts

Every prime contractor should be required to submit as part of the bid, the names of the subcontractors with whom the bidder, if awarded the contract, will subcontract for performance of the work.

1. Provisions for Listing Subcontractors on Bid Documents

The Department of Public Work's (DPW) request for bid should include instructions requiring prime contractors to list all subcontractors that will be used for services, equipment, and supplies at the time of bid submittal. The name and business address of each subcontractor who will perform work or render services to the prime contractor on DPW projects should also be included. The prime contractor should list only one subcontractor for each portion as defined by the prime contractor in his or her bid. The prime contractor should specify the price and/or the percentage of contract value associated with each subcontractor identified in the bid documents.

Within three working days of notification or award of the contract, the prime contractor should provide DPW with documentation which specifies the value of each subcontract.



2. Penalties for Failure to List Subcontractors on Bid Documents

If the prime contractor fails to list subcontractors in the bid, presents itself as performing subcontracting work, or names two or more subcontractors to perform the same work, such actions will result in the prime contractor being deemed non-responsive.

B. Substitution of Subcontractors After Award of Contract

Many prime contractors list subcontractors on their bid documents with no real intention of utilizing their services. Substitution of a listed subcontractor in furtherance of bid shopping or bid peddling before or after the award of the prime contract should be prohibited.

1. Provisions for Substitution of Subcontractors

The City should require prime contractors to provide written justification whenever the prime contractor, in performing the contract, fails to employ the services of a subcontractor listed in bid documents or substitutes another subcontractor for one already identified in the documents.

2. Grounds for Consenting to a Contractor's Request for Substitution

Grounds for subcontractor substitution should be established by the City. The grounds for which the City may consider allowing a prime contractor to substitute another entity for a listed subcontractor are as follows:

- When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written subcontract.
- When the listed subcontractor becomes bankrupt or insolvent
- When the listed subcontractor fails or refuses to perform its subcontract
- When the listed subcontractor fails to obtain the necessary licenses, bonding, insurance, or other statutory requirements to perform the work detailed in the contract
- When the awarding authority or its duly authorized officer determines that the work performed by the listed subcontractor is substantially unsatisfactory, not in substantial accordance with drawings and specifications, or substantially delayed or causing the disruption of the progress of work.



